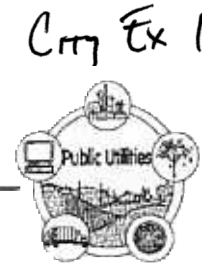


City of



Department of Public Utilities
Administration Division
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(559) 498-4891 FAX (559) 498-1304



September 18, 2001

Mr. Michael Jackson, Deputy Area Manager
U.S. Department of the Interior
Bureau of Reclamation
1243 "N" Street
Fresno, California 93721-1813

Subject: City of Fresno: Central Valley Project Contract Renewal Negotiations

Dear Mr. Jackson:

As we discussed during the Central Valley Project (CVP) contract renewal negotiations on September 6, 2001, the City of Fresno (City) is providing the Bureau of Reclamation (Bureau) our summary list of issues requiring resolution in the current draft CVP renewal contract. The City provides the following list of issues with the understanding that has been repeated numerous times during the negotiations; that is, the parties are negotiating a "package" of terms that are linked in many complex ways. Modification of some terms of the contract may require reexamination of other previously agreed-upon terms.

The following issue list is presented in summary form in the order that the items appear in the draft contract. (The Bureau should be aware that the City has provided the Bureau with a more in-depth analysis of some of these issues in other correspondence. The City and the Bureau have also discussed many of these issues in detail over the course of various contract negotiation sessions.)

1. 4th Recital. The City is unaware of an amendment to its original (1961) contract. The phrase "as amended" in this recital should be deleted.
2. 5th Recital. This recital is superfluous to the underlying contract and should be deleted. The City entered into the Binding Agreement without waiving its rights to contest the enforceability or constitutionality of CVPIA section 3404(c)(3). If the Bureau insists on including this recital, the City must insist on adding another recital clarifying its prior reservation regarding section 3404(c)(3).
3. Article 1(n2). The reference to the 5th Recital should be deleted. The Binding Agreement does not provide an entitlement to receive water. As noted above, the City also proposes the deletion of the 5th Recital.

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4. Article 3(e). The City remains quite concerned with the first sentence of this section. The City has repeatedly explained to the Bureau that the City is unique among almost all the CVP contractors in its authority over land use issues. Almost all other CVP contractors do not have such authority because they are *special districts* rather than cities or counties. The provision in Article 3(e) would make the City vulnerable to claims that it is in breach of its water supply contract each time it makes a land use decision. It is entirely inappropriate to hold the City's water supply hostage because of the potential land use changes that might occur in the City over time. While the City certainly intends to comply with all local, state and federal environmental laws in carrying out its land use authority, it will do so through direct application of those laws to the specific projects as they arise. The security of the City's water supply should not be at issue when the City is asked to make this type of land use decisions.

The City has expressed a willingness to meet with the Bureau and other Interior Department personnel on September 17, 2001, to discuss the implications of this provision. However, the City expects that this provision will continue to be a problem. The City will need contract language that unambiguously preserves City's full statutory rights and obligations to make land use decisions without risk to its CVP contract or compromise of terms therein.

5. Article 6. The City has repeatedly expressed consternation over the terms of this article. While the Bureau insists that the City meter all service connections to its customers. It is clear that this was not the original intent of Congress when it drafted and approved the CVPIA. Nevertheless, the Bureau continues to insist on contract language that goes well beyond that intended by Congress in section 3405(b).

The City also notes again that the language proposed by the Bureau in Article 6(a) is substantively different from that set forth in CVPIA section 3405(b). CVPIA generally requires that surface water delivery systems be equipped with water measuring devices. This requirement was intended to give each CVP contractor some flexibility in recognition that their individual circumstances vary. Instead of imposing requirements consistent with this intent, the Bureau has manipulated the flexible standard in CVPIA into a mandate that each service connection be metered. The City cannot accept the terms or language of this article as drafted.

6. Article 7. As the Bureau knows, the City has joined with the other CVP M&I contractors in contesting the application of certain aspects of the current CVP M&I interim rate setting policy. The M&I contractors have indicated their inclination to delay execution of renewal contracts until the rate setting disputes are resolved. However, the City is also mindful that East Bay Municipal Utility District has executed an

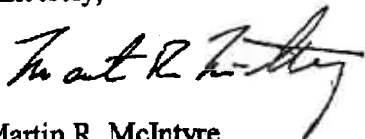
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amendatory contract with reservation of right language regarding the rate setting issues, and apparently Sacramento Municipal Utility District has tentatively agreed upon similar language for their renewal contract. Provided the other issues addressed in this correspondence can be resolved, the City would consider similar contract language that reserves the City's rights with respect to the rate setting issues. The City, however, continues to urge the Bureau to complete its consideration of the M&I rate setting settlement proposal so that this issue can be resolved promptly.

7. Article 7(j)(2). The agricultural version of the Friant form of contract, Article 7(j)(2), paraphrases CVPIA section 3405(d)(4). This section exempts from tiered pricing certain water use practices. The City's form of contract should include this provision.
8. Article 8. The language of this short article implies that the City was at one time liable for non-interest bearing operation and maintenance deficits. Either the word "further" should be deleted from the final clause of the article, or the entire article should be deleted.
9. Article 14. The City is not a party to NRDC v. Patterson, nor is the City a member of the Friant Water Users Authority. The City has not been a direct participant in the negotiations referenced in this article. Before the City can agree to the terms of this article, it will need further briefing from the Bureau.

While we have identified the most obvious problems with this form of contract, there may be other issues that arise as the City and the Bureau continue discussions. Should you have any questions on the items discussed above, please do not hesitate to contact me.

Sincerely,



Martin R. McIntyre
Interim Public Utilities Director

- c: Alan Autry, Mayor
Council Members
Daniel G. Hobbs, City Manager
Hilda Montoy, City Attorney
Andrew T. Souza, Assistant City Manager
Nick P. Yovino, Development Director
Rob Saperstein, Hatch & Parent